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December 16, 1997

Ms. Cynthia L. Johnson
Director, Cash Management Policy and Planning Division
Financial Management Service
U.S. Department of the Treasury
401 14th Street, S.W.
Room 420
Washington, DC 20227

Re: 31 CFR Part 208; Management of Federal Agency Disbursements;(1510-AA56)

Dear Ms. Johnson:

The Independent Bankers Association of America (IBAA) is pleased to comment on the Treasury's Financial Management Service (FMS) proposed regulations implementing the Debt Collection Improvement Act of 1996 (Act). The Act requires the federal government to convert all payments made by check to electronic funds transfer (EFT), with the exception of tax refunds, no later than January 2, 1999. This initiative is commonly referred to as "EFT '99." The IBAA represents 5,500 independent community banks nationwide with more the 15,000 locations that hold nearly \$375 billion in insured deposits, \$445 billion in assets, and more than \$240 billion in loans for consumers, small businesses and farms in the communities they serve. IBAA members also employ more than 200,000 people in their communities.

Background

The Debt Collection Improvement Act of 1996 requires all federal agencies to convert payments from checks to EFT in two phases. During phase one, individuals and businesses that become eligible for federal payments on or after July 26, 1996, must receive payments via EFT unless the recipient certifies in writing to the issuing federal agency that they do not have a bank account. Phase two begins on January 2, 1999. After this date, all federal payments must be made by EFT unless a waiver is granted. The Secretary of the Treasury has broad authority to issue waivers to exempt certain individuals, classes of individuals, or certain types of checks from the EFT requirements. The Act also requires the Secretary to ensure that individuals who are required to have a bank account have access to such an account at a "reasonable cost," and have the same consumer protections as other bank account holders at the same financial institution.

IBAA Member Efforts

Community bank comments to the IBAA on phase one of the Act indicate that its



implementation has not been problematic thus far. A number of community banks are in various stages of offering direct deposit promotional campaigns targeting federal check recipients who come to their banks to cash or deposit checks. For example, community banks are distributing Social Security Administration direct deposit flyers to federal check recipients and reminding these individuals about the EFT requirement. Many community banks report little difficulty converting existing bank customers receiving checks to direct deposit once the customers understand that it is the federal government, and not the bank, imposing the direct deposit requirement. A number of community banks are already experiencing significant declines in the number of federal checks they process.

Others report that many existing bank customers are averse to direct deposit, and will likely wait until program enrollment is an absolute requirement. Reasons for this aversion range from the desire to have the physical check as proof of payment to concerns about missing the monthly social interactions in bank lobbies and post offices.

IBAA is not currently aware of a significant number of formalized community bank marketing campaigns designed to convert federal payment recipients without bank accounts into "banked" individuals. We would like to note, however, that more than 120 community banks and other financial institutions covering all zip codes in Texas will voluntarily provide accounts similar to the Direct Deposit Too model to the 22,000 federal benefit recipients currently participating in the Direct Payment Card (DPC) pilot program operated by the FMS. IBAA is very encouraged by this response which we believe is an indication of the willingness of community banks and other financial institutions to serve individuals without bank accounts.

We believe that there are several reasons for the limited number of community bank marketing campaigns targeting individuals without bank accounts. First, many community banks are apprehensive about moving forward with product development or marketing given the uncertainty regarding the final rule governing phase two.. However, we hope and expect to see more activity in the coming months. Second, unlike their larger counterparts, community banks typically have very small marketing budgets. As a result, many community banks are waiting for the Treasury, SSA and other federal agencies to develop marketing materials that will enable them to piggyback their banks' efforts on marketing campaigns launched at the national level.

Treasury's Proposed Rule

On September 11, 1997, the Treasury released its proposed regulations that would implement phase two of the Act. An overview of the proposed regulations is provided below.

- All federal payment recipients with an account at a financial institution (bank, credit union or savings and loan) will receive payments electronically through those accounts.

- Recipients with an account who were receiving federal payments by check prior to July 26, 1996, will be eligible for a waiver where a change to electronic payment would impose a hardship due to physical disability or a geographic barrier. For example, recipients (or their legal representatives) may request a waiver if they would be physically unable to access their funds if they were delivered electronically, or if there is limited access to financial institutions, ATMs or point-of-sale terminals in the area.
- Federal recipients without an account at a financial institution may choose to open an account at a financial institution on their own, or be provided with an account in their name that allows them to access their funds at a reasonable cost, and that has the same consumer protections as other accounts at the same financial institution. These recipients will be able to continue to receive paper checks until these accounts, being designed by the Department of the Treasury, are available or until January 2, 2000, whichever is earlier. These newly created accounts, "Electronic Transfer Accounts" (ETAs), will permit ATM and point-of-sale access.
- Recipients without an account at a financial institution who would face a financial hardship if they received their payments electronically will be eligible for a waiver, which would allow the recipient to continue to receive paper checks. Waivers will also be available to recipients without an account who certify that they have physical disabilities or confront geographic barriers preventing them from receiving their payments electronically.
- The proposed rule, and the new law, also apply to payments made to government vendors. Vendors are not eligible for waivers, but in some cases, such as certain one-time payments, agencies may choose to make payments by check.
- Payments must be made into an account with a financial institution, and must be in the name of the recipient, with two exceptions: 1) payments may be made to "representative payees" authorized to manage a recipient's finances; or 2) payments may be deposited to a recipient's "sweep account" at registered securities brokerage firms.
- In some cases, federal agencies will not be required to make payments via EFT for reasons such as military deployment, threats to national security, or certain other situations where EFT is impractical. In certain circumstances, agencies may choose to make payments to vendors by check, such as for certain one-time payments, where making the payment by EFT would be more expensive than making a check payment.

Waivers

The proposed regulation establishes eight categories of payments eligible for waiver from the requirements that a federal payment be made electronically: 1) to an individual with a bank account who became eligible for a federal payment prior to July 26, 1996, who certifies that an EFT would impose a hardship due to a physical disability or geographic barrier; 2) to an individual without a bank account on January 2, 2000, who certifies that an EFT would impose a hardship due to a physical disability or geographic barrier or would impose a financial hardship; 3) to an individual residing in a foreign country where the foreign country's infrastructure does not support EFTs; 4) payments to recipients within a disaster area; 5) payments for military operations; 6) payments where national security or law enforcement operations require EFT not be used; 7) non-recurring payments where it is not cost-effective for the issuing agency to make an EFT; and, 8) instances where the federal government would be seriously injured unless payment is made by a method other than EFT. Upon receipt of an individual's written certification of a hardship, the waiver would automatically be granted and not subject to review. The IBAA applauds the FMS's efforts to establish waiver categories that balance the interests of payment recipients and issuing federal agencies.

We are concerned that the EFT requirement could compromise the liens commonly placed by financial institutions on federal program payments to farmers to assure that loans will be repaid. Many federal programs administered by the Farm Service Agency and the Department of Agriculture will be covered by the EFT requirement. It is our understanding that checks issued for federal program payments with liens are generally made payable to the lienholder and the farmer. Bank employees recognize that a bank officer must endorse the check on behalf of the bank before funds are disbursed. This gives the bank officer the opportunity to work out the details with the farmer regarding the amount that will be credited to the farmer's loan and the amount that will be credited to farmer's checking and/or savings account. In an EFT environment, banks would not know when the payment arrived and could lose the opportunity to apply federal payment proceeds against the farmer's loans, particularly in instances of borrower dishonesty.

IBAA strongly recommends that the FMS, in conjunction with the Department of Agriculture and other federal agencies, determine the impact of the EFT requirement on a bank's lien. Moreover, if it is determined that liens would be compromised and adequate controls cannot be established to protect lienholders then payments should continue to be made by check and an appropriate waiver category should be established.

Reasonable Cost

The Act requires the Treasury Secretary to ensure that federal payment recipients have access to a bank account at a "reasonable cost." FMS could have interpreted this provision in

two ways. First, this provision could be interpreted very broadly to apply to all individual recipients who receive their federal payments via electronic funds transfer. Such an interpretation would essentially provide for the Treasury to regulate bank fees. Alternatively, the provision could be interpreted to apply to only those individuals who, as of January 2, 1999, have not "voluntarily selected or opened an account at a financial institution and who will need access to such an account in order to receive a federal payment by electronic funds transfer." The IBAA applauds the FMS for its decision to apply the "reasonable cost" provision only to individuals that do not have a bank account as of January 2, 1999. The potential application of the provision to all individuals receiving federal payments would have been an inappropriate, burdensome and impractical requirement for the FMS to enforce, and would have upset competitively-balanced financial services marketplace.

Electronic Transfer Accounts

The IBAA hopes that the approximate 10 million individuals without bank accounts will become "banked" as a result of public and private sector educational and marketing efforts. However, IBAA believes that a certain percentage of these individuals will not have bank accounts by the January 2, 2000 deadline. We understand that Treasury plans to obtain account services from a financial institution for these individuals "through a competitive process that will select one or more entities to act as Treasury's agent." Under this arrangement, the financial institution must "perform those functions that involve the disbursement of public funds, including the establishment of the recipient's account and the crediting of the federal payment to the account." Treasury would not preclude "non-financial institutions working in partnership with the financial agent" to perform other functions. These newly created accounts, "Electronic Transfer Accounts" (ETAs) would permit ATM and point-of-sale access.

Regulatory Framework

IBAA assumes that ETAs will replace the Direct Federal EBT program. We believe that the proposed rule (Electronic Benefits Transfer; Selection and Designation of Financial Institutions as Financial Agents) published in the Federal Register on May 9, 1997, would likely serve as the regulatory framework for financial agents offering ETAs. IBAA's comment letter to the FMS on this proposed rule expressed concerns about the financial agent's inability to close an account in instances of recipient fraud, abusive or destructive behavior, other duties and compensation. A copy of this letter is attached. We strongly encourage FMS to include the financial agent duties when seeking additional public comment on ETAs rather than treating these duties as a separate rulemaking.

Competitive Solicitation Process

The IBAA believes that a competitive solicitation process is a reasonable manner to obtain financial institutions interested in offering ETAs providing community banks and other

financial institutions have sufficient time to market bank accounts to individuals currently without bank accounts prior to the issuance of a competitive solicitation. In regard to the geographic area covered by a competitive solicitation process, we believe that the larger the geographic area bidders are asked to serve, the more unlikely it is that smaller institutions will have the operational capacity to participate in the program. The most ideal geographic division of the country, from a community bank perspective, would be a county/city or multi-county area, but no larger. IBAA recommends that FMS allow financial institutions responding to the competitive solicitation have the ability to specify the geographic area they are willing to cover in lieu of the FMS determining the geographic area. Such an arrangement could possibly increase the number of community banks and other smaller financial institutions willing to offer ETAs. In addition, we recommend that any awarded contract(s) should be re-bid after a period of time.

Account Attributes

IBAA believes that ETAs should only provide recipients electronic access to federal benefits. ETAs should not include ancillary services (over-the-counter withdrawals, bill payment services, and private sector direct deposits) typically offered with traditional bank accounts as these accounts would directly compete with the account offerings of financial institutions. Such attributes would give the ETA financial agent an unfair market advantage over financial institutions not serving as the Treasury's financial agents. We believe that four to six withdrawals should be included in the base price of the ETA. The IBAA strongly urges FMS to remain mindful of any unintended anti-competitive issues when developing ETA attributes and structuring the competitive solicitation process.

Role of Non-Financial Institution

With the exception of payments made to authorized payment agents or an investment account, IBAA agrees with the FMS determination that federal payments made via EFT must be deposited to an account at a financial institution. Such a determination does not preclude nonbanks from engaging in innovative arrangements with financial institutions to offer products and services to federal payment recipients.

Vendor Payments

The Act and the proposed regulation require payments to vendors providing goods and services to the federal government be made using EFT. Federal agencies plan to convert current paper remittance information to electronics. This information, commonly known as financial electronic data interchange (FEDI) will be transmitted electronically along with the payment to the vendor's bank using an ACH addenda record. Alternatively, the remittance information could be electronically transmitted to a third-party service provider that would then pass the information to the vendor.

We also understand that several federal agencies will soon test the feasibility of vendors obtaining their remittance information from a secure agency Web site. IBAA encourages the Treasury and other federal agencies to work closely with the vendor community to establish a system whereby vendors have the flexibility to select the remittance delivery option most compatible with their operating environments.

Although FEDI is commonly delivered with the ACH payment, very few community banks currently have the capability to translate and report this information to their customers. Due to requests from the IBAA and the Treasury, the Federal Reserve System intends to provide FEDI translation software to all Federal Reserve System electronic access customers, including Fedwire, prior to January 1, 1999. This new service will greatly improve the ability of community banks of all sizes to meet public and private sector demands for FEDI translation and reporting services. However, additional work needs to be done to ensure that community bank data processors are translating and reporting the information received from the Federal Reserve.

Conclusion

We believe the FMS's proposed rule is relatively reasonable for all stakeholders -- payment recipients, financial institutions, and federal agencies. We strongly encourage the FMS to address our concern regarding bank liens on federal payments. We also strongly urge the FMS to develop a structure and solicitation process for ETAs that will allow smaller financial institutions to participate if they so desire and to prevent financial institutions serving as ETA financial agents from gaining any type of competitive advantage over other financial institutions.

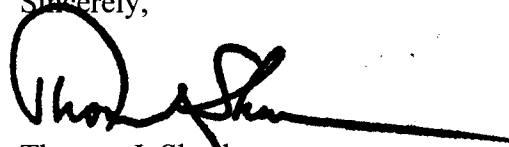
We urge the FMS to finalize this rule as expeditiously as possible so that all stakeholders can prepare to implement the rule in a timely fashion. Implementation of the Act is a daunting, but achievable task for the Treasury, federal agencies and financial institutions. The success of the implementation will depend on the federal government and financial institutions working closely and cooperatively to address the concerns of federal payment recipients. We encourage the Treasury to leverage the existing payments infrastructure to lessen the implementation burden, and applaud Treasury's efforts early in the implementation process to obtain the viewpoints of the IBAA. Early identification of concerns and issues is critical to the successful implementation of EFT '99.

More than twenty years ago, the Treasury rolled out direct deposit as an option for federal benefit recipients and employees. Thanks to the Treasury's efforts, direct deposit is a mainstream payment mechanism embraced by millions in both the private and public sectors. We believe that EFT '99 will also be a major driving force in moving additional private sector payments to electronics.

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Thank you for affording us the opportunity to present our views on the proposed rule.

Sincerely,

A handwritten signature in black ink, appearing to read 'Thomas J. Sheehan', with a long horizontal flourish extending to the right.

~~Thomas J. Sheehan~~
Chairman
IBAA Bank Operations Committee
and
President
Grafton State Bank
Grafton, WI

Enclosure